

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

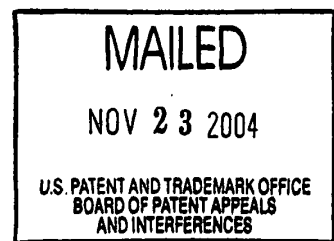
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL CLARY
and DONALD DEUTERMAN

Appeal No. 2005-0096
Application No. 09/765,098

ON BRIEF



Before COHEN, FRANKFORT, and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Michael Clary et al. appeal from the final rejection (mailed December 8, 2003) of claim 1. Claims 3 through 5, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

THE INVENTION

The subject matter on appeal relates to "an articulating chair and, more particularly, to an improved fabric cover and refined knock-down frame which are quickly assembled to form a

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two-position chair" (specification, page 1). Claim 1 reads as follows:

1. An articulating chair, comprising:
a knockdown frame including a pair of separate generally U-shaped frame portions, one constituting a seat portion and the other constituting a backrest frame portion, each of said U-shaped frame portions having two chamfered ends, and a pair of generally L-shaped connectors adapted for a telescopic fit into the chamfered ends of said frame portions to form a rigid generally L-shaped frame, and all of said U-shaped frame portions and L-shaped connectors being Zinc plated for ease of assembly;
a removable cover formed to fit over the frame and to hold said knockdown frame in assembly, said cover including a top panel section sewn against a bottom panel section, a side panel section sewn there between, and a cushion enclosed there between, said cover being insertable over said frame and swingable relative to the frame;
whereby said chair may be assembled and positioned on a surface in one of a first position in which the seat portion of the frame rests flat with the backrest portion extending upward to provide a backrest, said cushion extending forwardly from the frame to provide a seat, and a second position said chair being adapted to be overturned from said first position to a second position in which the seat portion of the frame extends upwardly and the backrest portion slopes downwardly with the cushion resting thereon to present a reclining surface.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Geschwender	4,410,214	Oct. 18, 1983
Snyder	4,657,302	Apr. 14, 1987
Spease et al. (Spease)	5,435,203	Jul. 25, 1995

THE REJECTION

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Geschwender in view of Snyder and Spease.

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Attention is directed to the main and supplemental briefs (filed February 24, 2003 and April 9, 2004) and to the answer (mailed May 19, 2004) for the respective positions of the appellants and the examiner regarding the merits of this rejection.

DISCUSSION

Geschwender, the examiner's primary reference, discloses a leisure chair 1 composed of a knock-down frame 3, a removable cover 11 and a cushion 25. The knock-down frame comprises a pair of U-shaped tubular frame portions 5 and 7 and a pair of L-shaped rod connectors 9 adapted to be telescopically received in respective opposing ends of the tubular frame portions to form a rigid frame. In use, the chair may be disposed on a supporting surface in either of two positions: a "sitting" position as shown in Figure 1 and a "reclining" position as shown in Figure 2.

As conceded by the examiner (see page 3 in the answer), the Geschwender chair does not respond to the limitations in claim 1 requiring the ends of the U-shaped frame portions to be "chamfered" and the U-shaped frame portions and L-shaped connectors to be "Zinc plated." The underlying specification indicates that these features facilitate installation of the cover on the frame and prevent tearing of the cover during such

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installation. To cure the shortcomings of Geschwender in this regard, the examiner turns to Snyder and Spease.

Snyder discloses a modular lounge construction consisting of a number of interconnected chair units. To effect the interconnections, the construction includes sockets 14 and rod members 35 sized for insertion into the sockets. The ends 36 of the rod members are frusto-conical, i.e, chamfered, to expedite the insertion process (see column 3, lines 61 through 63).

Spease discloses "a motion transmitting remote control assembly of the type for transmitting motion in a curved path by a flexible motion transmitting core element" (column 1, lines 5 through 8). The assembly includes an elongated member 28 formed of a zinc plated rod (see column 5, lines 12 through 14).

In proposing to combine Geschwender, Snyder and Spease to reject claim 1, the examiner concludes that it would have been obvious at the time the invention was made to a person having ordinary skill in the art (1) "to modify the U-shaped frame portions of [Geschwender's] chair to have chamfered ends as taught by Snyder in order to facilitate receipt of the frame portions within the L-shaped connectors" (answer, page 4) and (2) "to have the U-shaped frame portions and L-shaped connectors of [Geschwender's] chair be Zinc plated [as taught by Spease] to

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provide functional durability under the stress of use" (answer, page 4).

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner proposed by an examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. Id. In the present case, the combined teachings of Geschwender, Snyder and Spease would not have suggested the combination proposed by the examiner.

To begin with, although Snyder fairly suggests that the ends of male-type members (rod members 35) can be chamfered to facilitate insertion into female-type members (sockets 14), claim 1 requires that the chamfered ends be on the U-shaped frame portions which, within the context of the claim, are female-type members adapted to mate with male-type members in the form of the L-shaped connectors that telescopically fit "into" the chamfered ends of the U-shaped frame portions. Hence, the examiner's reasoning that it would have been obvious in view of Snyder to provide chamfered ends on Geschwender's U-shaped frame portions

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to facilitate their receipt within the L-shaped connectors is not germane to the subject matter actually recited in the claim. In short, Snyder's disclosure of chamfered ends on male-type members does not suggest any desirability or incentive to provide chamfered ends on Geschwender's female-type U-shaped frame portions as required by claim 1.

Moreover, Spease's disclosure of a motion transmitting remote control assembly having an element which is zinc plated contains no suggestion to furnish the U-shaped frame portions and L-shaped connectors of Geschwender's leisure chair with zinc plating. The widely disparate natures of the two devices belies the examiner's functional durability under stress rationale.

Hence, the combined teachings of Geschwender, Snyder and Spease do not justify a conclusion that the differences between the subject matter recited in claim 1 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Therefore, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 1 as being unpatentable over Geschwender in view of Snyder and Spease.


SUMMARY

The decision of the examiner to reject claim 1 is reversed.

REVERSED

IRWIN CHARLES COHEN)
Administrative Patent Judge)

Charles E. Frankfort)
CHARLES E. FRANKFORT)
Administrative Patent Judge)


JOHN P. MCQUADE
Administrative Patent Judge

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